

W.D.N.Y. / BUFFALO
90-cv-1086A(F)
Acara, J.
Foschio, M.J.

MANDATE
United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 13th day of April two thousand and four,

Present:

Hon. James L. Oakes,
Hon. Ralph K. Winter,
Hon. Guido Calabresi,
Circuit Judges.



Gregory F. Daniel, *et al.*,
Plaintiffs-Appellants- Cross-Appellees,

v.

American Board of Emergency Medicine, *et al.*,
Defendants-Appellees- Cross-Appellants.

03-6153 (L); 03-6157 (XAP);
03-6163 (XAP); 03-6165 (XAP);
03-6167 (XAP); 03-6177 (XAP);
03-6185 (XAP); 03-6187 (XAP)

Plaintiffs-appellants-cross-appellees move to dismiss all of the cross-appeals and to limit the number of briefs filed by the defendants-appellees-cross-appellants. Upon due consideration, it is hereby ORDERED that the motion to dismiss is granted because the cross-appeals challenge interlocutory orders merely to provide this Court with alternate grounds for affirmance. See *In re DES Litig.*, 7 F.3d 20, 23-25 (2d Cir. 1993); *Allstate Ins. Co., v. A.A. McNamara & Sons, Inc.*, 1 F.3d 133, 137 (2d Cir. 1993); see also *Int'l Trade Administration v. Rensselaer Polytechnic Institute*, 936 F.2d 744, 747 (2d Cir. 1991) ("a party need not cross-appeal in order to assert an alternate ground based on the record to support a district court decree"). It is FURTHER ORDERED that the motion to limit the number of briefs is denied as moot because the cross-appeals are hereby dismissed and the defendants-appellees-cross-appellants have stated that they will file a single consolidated brief to oppose the appeal.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: Lucille Carr

SAGAT

A TRUE COPY
ROSEANN B. MacKECHNIE, CLERK

J. W. Hope

ISSUED AS MANDATE: APR 30 2004